

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7339

DATE COMPLAINT FILED: March 5, 2018

DATE OF NOTIFICATIONS: March 8, 2018

DATE LAST RESPONSE RECEIVED: June 28, 2018

DATE ACTIVATED: May 24, 2018

EARLIEST SOL: May 30, 2021

LATEST SOL: September 30, 2021

ELECTION CYCLE: 2016

COMPLAINANT:

American Democracy Legal Fund

RESPONDENTS:

Trump Victory and Bradley T. Crate in his official capacity
as treasurer

Republican National Committee and Anthony W. Parker in
his official capacity as treasurer

Donald J. Trump for President, Inc. and Bradley T. Crate in
his official capacity as treasurer

Donald J. Trump

Alabama Republican Party and Sallie Bryant in her official
capacity as treasurer

Republican Party of Arkansas and Joel Pritchett in his
official capacity as treasurer

California Republican Party and Mario Guerra in his
official capacity as treasurer

Connecticut Republican Party and Warner C. Pyne, III in
his official capacity as treasurer

Illinois Republican Party and Judy A. Diekelman in her
official capacity as treasurer

Kansas Republican Party and Richard L. Todd in his
official capacity as treasurer

Republican Party of Louisiana and Dexter Duhon in his
official capacity as treasurer

Republican Party of Minnesota-Federal and Bron Scherer
in his official capacity as treasurer

Mississippi Republican Party and Paul V. Breazeale in his
official capacity as treasurer

Missouri Republican State Committee-Federal and Patricia
Thomas in her official capacity as treasurer

New Jersey Republican State Committee and
April Bengivenga in her official capacity as treasurer

NY Republican Federal Campaign Committee and Steven
Wells in her official capacity as treasurer

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- 1 North Carolina Republican Party and Jason Lemons in his
- 2 official capacity as treasurer
- 3 North Dakota Republican Party and Nicholas Hacker in his
- 4 official capacity as treasurer
- 5 Republican Federal Committee of Pennsylvania and
- 6 Dakshinamurthy Raja in his official capacity as
- 7 treasurer
- 8 South Carolina Republican Party and Sharon Thompson in
- 9 her official capacity as treasurer
- 10 Tennessee Republican Party Federal Election Account and
- 11 Frank Colvett in his official capacity as treasurer
- 12 Republican Party of Virginia Inc. and John G. Selph in his
- 13 official capacity as acting treasurer
- 14 West Virginia Republican Party, Inc. and Michelle L.
- 15 Wilshire in her official capacity as treasurer
- 16 Republican Party of Wisconsin and Andrew Hitt in his
- 17 official capacity as treasurer
- 18 Wyoming Republican Party, Inc. and Doug Chamberlain in
- 19 his official capacity as treasurer
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RELEVANT STATUTES:

52 U.S.C. § 30104
52 U.S.C. § 30116
52 U.S.C. § 30122
11 C.F.R. § 102.17
11 C.F.R. § 104.1(a)
11 C.F.R. § 104.3(a), (b)
11 C.F.R. § 109.20
11 C.F.R. § 110.4
11 C.F.R. § 110.6
11 C.F.R. § 109.32

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

These matters relate to joint fundraising conducted through Trump Victory, which was comprised of Donald J. Trump's principal campaign committee, Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the "Trump Committee"), the Republican National Committee and Anthony Parker in his official capacity as treasurer ("RNC"), and twenty-one state party committees ("the SPCs").¹ The Complaint's primary allegation is that Trump Victory was a pretext through which millions of dollars in contributions that the RNC used to support the Trump Committee were funneled to the RNC through the SPCs in violation of the Act's contribution limits, earmarking provisions, and its prohibition on contributions in the name of another.² Respondents argue that all of their actions arising out of their joint fundraising activity were legal, thus, there can be no violation.³

We conclude that the available information, including the pattern of transfers containing funds raised by Trump Victory, provides reason to believe that the RNC accepted excessive contributions. Further, there is reason to believe that Trump Victory, the RNC, and the SPCs inaccurately disclosed receipts and disbursements. Accordingly, we recommend that the Commission find reason to believe that: (1) Trump Victory, the Trump Committee, the RNC, and the SPCs violated the joint fundraising regulations at 11 C.F.R. § 102.17(c)(1) and (2); (2)

¹ See Compl. at 4-5, MUR 7339 (Mar. 5, 2018);

² See Compl. at 4-5, MUR 7339.

³ See Trump Victory, *et al.* Resp. at 1, MUR 7339 (Apr. 30, 2018) (hereinafter "Trump Victory Resp." on behalf of Trump Victory and Trump Committee); RNC, *et al.* Resp. at 2-3, MUR 7339 (Apr. 27, 2018) (hereinafter "RNC Resp." on behalf of RNC and 18 of the SPCs); Ill. Republican Party Resp. at 1, MUR 7339 (May 6, 2018) (adopting arguments of the RNC Response as its own); N.D. Republican Party Resp. at 1, MUR 7339 (May 21, 2018) (noting its Response is with the RNC Response); Tenn. Republican Party Federal Election Account Resp. at 1 (May 24, 2018) (joining RNC Response).

1 the RNC accepted excessive contributions in violation of 52 U.S.C. § 30116(f); and (3) Trump
2 Victory, the RNC, and the SPCs violated the reporting requirements at 52 U.S.C. § 30104(a) and
3 (b) and 11 C.F.R. § 104.3(a) and (b). We also recommend that the Commission take no action at
4 this time on the coordinated expenditure, earmarking, and contributions in the name of another
5 allegations.

6 II. FACTUAL BACKGROUND

7 A. The Creation of Trump Victory

8 The Trump Committee was the principal campaign committee for Donald J. Trump's
9 2016 presidential campaign.⁴ On May 17, 2016, the RNC announced the formation of Trump
10 Victory, a joint fundraising committee consisting of the Trump Committee, the RNC, and eleven
11 of the SPCs.⁵ Approximately four months later, ten additional SPCs joined Trump Victory.⁶

12 The participating committees entered into a written joint fundraising agreement that set
13 forth the manner in which funds received by Trump Victory would be allocated among the
14 participants.⁷ According to the Respondents, under the joint fundraising agreement, an
15 individual could contribute up to \$449,200 to Trump Victory, which represents the total amount
16 that an individual could contribute to the participating committees under the applicable

⁴ Donald J. Trump for President, Inc.'s Statement of Organization (June 29, 2015).

⁵ RNC Resp. at 3; *see* Trump Victory's Statement of Organization (May 25, 2016).

⁶ *See* Trump Victory's Amended Statement of Organization (Sept. 21, 2016); Trump Victory's Amended Statement of Organization (Sept. 4, 2016).

⁷ *See* Trump Victory Resp. at 1-2. Respondents did not provide a written joint fundraising agreement identifying the participants or the allocation formula.

1 contribution limits.⁸ Contributions from individuals were allocated as follows: the first \$2,700
2 was designated for the Trump Committee for the primary election, and the second \$2,700 for the
3 Trump Committee for the general election.⁹ If the contribution was made after the primary, the
4 first \$2,700 was designated for the general election. The next \$33,400 was allocated to the RNC.
5 Additional amounts were split equally among the participating SPCs up to \$10,000.¹⁰ The next
6 \$100,200 was allocated to the RNC's headquarters account, and any remaining amount, up to
7 \$100,200, to the RNC's Legal Proceedings account.¹¹

8 Under this allocation formula, any individual contribution over \$38,800 would exceed the
9 combined contribution limits for the Trump Committee and the RNC and result in some money
10 being allocated to the SPCs. Around 540 individuals contributed over \$38,800 to Trump
11 Victory. In total, Trump Victory reported transferring over \$29 million to the SPCs from donors
12 who had reached their limits for contributions to the Trump Committee and the RNC.¹² The crux
13 of the Complaint relates to that \$29 million.

⁸ This amount is based on the allocation formula described in the Trump Victory Response. *See* Trump Victory Resp. at 2 (explaining "the allocation formula applicable to an individual contribution in October 2016").

⁹ *See* Trump Victory Resp. at 2; Bradley T. Crate Affidavit ¶ 5.

¹⁰ *See* Trump Victory Resp. at 2.

¹¹ *Id.*

¹² *See* Trump Victory's Amended 2016 Year-End Report of Receipts & Disbursements (May 26, 2017); Trump Victory's Amended 2016 Post-General Election Report of Receipts & Disbursements (Mar. 15, 2017); Trump Victory's Amended 2016 Pre-General Election Report of Receipts & Disbursements (Feb. 14, 2017); Trump Victory's Amended 2016 October Quarterly Report of Receipts & Disbursements (Apr. 5, 2017); Trump Victory's July Quarterly Report of Receipts & Disbursements (July 15, 2016).

B. Complaint

The Complaint alleges that 80% of Trump Victory disbursements to the SPCs “resulted in an immediate same-day transfer of the funds from the recipient state party to the RNC and in essentially every case, the funds were transferred to the RNC within 2-3 days.”¹³ According to the Complaint, over \$27 million was transferred through the SPCs to the RNC in this manner.¹⁴ The Complaint identifies 119 transactions between September 30, 2016, and December 16, 2016, that followed a pattern of near-simultaneous transfers in and out of the SPCs.¹⁵

As an example, the Complaint states that Trump Victory transferred a total of \$8,609,664.39 to 15 SPCs on September 30, 2016.¹⁶ Each of the recipient SPCs contributed either the same amount, or an amount \$20 less than the original amount, to the RNC on September 30, 2016.¹⁷ The RNC, in turn, received a total of \$8,609,364.39 on that day from the SPCs.¹⁸

¹³ Compl. at 6.

¹⁴ *Id.* at 5.

¹⁵ *See id.* at 9-10.

¹⁶ These transfers were disclosed by Trump Victory and each of the recipient SPCs. *See id.* at 9.

¹⁷ The Complaint asserts that the \$20 difference is a bank fee for the transfer. *Id.* at 6, 8.

¹⁸ *See id.* at 9.

1 Further, a review of the SPCs' disclosure reports indicates that seventeen of the SPCs¹⁹
2 transferred the equivalent of 99% or more of their total Trump Victory allocations to the RNC.²⁰
3 And two of the SPCs described multiple transfers to the RNC on their disclosure reports as either
4 "JFC-Transfer-See Memo Attribution"²¹ or "JFC Transfer-Trump Victory,"²² suggesting that
5 they understood they should immediately transfer their Trump Victory-allocated funds directly to
6 the RNC.

7 The Complaint alleges that the timing, uniformity, regularity, and size of these transfers
8 indicates one of two possible explanations. One explanation is that the SPCs "had an
9 understanding or an explicit agreement regarding how these funds would be moved and that the
10 donors must have known and earmarked their funds for the RNC to help the Trump
11 [Committee]."²³ As support, the Complaint cites to a public statement of a contributor who said,
12 "I remember thinking I wouldn't give [the super PAC Rebuilding America Now] my money."
13 but "I realized that I have never ever been as excited about a candidate as I've been about Donald

¹⁹ These SPCs are: (1) Alabama Republican Party, (2) Republican Party of Arkansas, (3) California Republican Party, (4) Connecticut Republican Party, (5) Illinois Republican Party, (6) Kansas Republican Party, (7) Republican Party of Minnesota, (8) Mississippi Republican Party, (9) Missouri Republican State Committee-Federal, (10) New Jersey Republican State Committee, (11) North Carolina Republican Party, (12) Republican Party of Virginia, Inc., (13) West Virginia Republican Party of Virginia, Inc., (14) Republican Party of Wisconsin, (15) Wyoming Republican Party, Inc.; (16) Tennessee Republican Party Federal Election Account; and the (17) North Dakota Republican Party.

²⁰ The Republican Party of Louisiana and the NY Republican Federal Campaign Committee were exceptions to this general pattern of transfers because they kept at least half of the funds they received from Trump Victory.

²¹ See, e.g., N.C. Republican Party's 2016 October Monthly Report of Receipts & Disbursements at 91 (Oct. 20, 2016).

²² See, e.g., Tenn. Republican Party Federal Election Account's Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 125 (May 15, 2017).

²³ Compl. at 6.

1 Trump."²⁴ Based on the pattern of transfers and this statement, the Complaint alleges that:
2 (1) all of the Respondents violated the earmarking provisions because the contributions to Trump
3 Victory were earmarked to be transferred through the SPCs to the RNC and then to the Trump
4 Committee; (2) the transfers of Trump Victory funds from the SPCs to the RNC were
5 contributions in the name of others; and (3) the RNC accepted excessive contributions.²⁵

6 The second possible explanation the Complaint offers is that the purported transfers of
7 Trump Victory funds to the SPCs never occurred and the funds were actually transferred directly
8 from Trump Victory to the RNC, rendering all FEC reports concerning those transfers
9 fraudulent.²⁶ Or, that the funds may have been moved in and out of the SPCs' accounts without
10 their knowledge or permission, indicating that they never had control of the funds.

11 Further, the Complaint alleges that many of the SPCs failed to report distributions
12 received from Trump Victory or transfers made to the RNC, even though Trump Victory
13 reported making the disbursements and the RNC reported receiving transfers from the SPCs.

²⁴ *Id.* at 6 (quoting Theodore Sheilfer, *Trump Spent Massive Amounts in September Just Before Donors Grew Jittery*, CNN (Oct. 21, 2016), <https://www.cnn.com/2016/10/20/politics/donald-trump-september-donors-jittery/index.html>).

²⁵ Compl. at 14-16.

²⁶ *Id.* at 18-19.

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1 Specifically, the Complaint alleges that seven SPCs made thirteen reporting errors involving
2 over \$1 million in receipts from Trump Victory and over \$1.5 million in disbursements to the
3 RNC. Disclosure reports, however, reveal that only two of the SPCs identified in the
4 Complaint—the New Jersey Republican State Committee and the West Virginia Republican
5 Party—misreported receipts from Trump Victory and transfers to the RNC in their original
6 reports. For example, on November 7, 2016, Trump Victory reported transferring \$99,999.59 to
7 the New Jersey Republican State Committee, but that committee did not report receiving this
8 transfer or transferring it to the RNC, even though the RNC reported receiving a \$99,979.59
9 transfer from this SPC on November 7, 2016.²⁸ As another example, on December 16, 2016,
10 Trump Victory reported transferring \$18,505.14 to the West Virginia Republican Party, Inc.,
11 (“WV Republicans”) but that committee did not report receiving an \$18,505.14 transfer from
12 Trump Victory.²⁹ In addition, the RNC reported receiving \$18,485.14 on December 16, 2016,
13 from the WV Republicans, but the WV Republicans did not report transferring those funds to the
14 RNC.³⁰

²⁸ Compare N.J. Republican State Committee’s 2016 30-Day Post General Election Report of Receipts & Disbursements (Dec. 8, 2016), with N.J. Republican State Committee’s Amended 2016 30-Day Post General Election Report of Receipts & Disbursements at 52, 103 (Aug. 14, 2018) (disclosing a transfer from Trump Victory in the amount of \$99,999.59 and transfer to the RNC in the amount of \$99,979.59); see RNC’s 2016 30-Day Post General Election Report of Receipts & Disbursements at 50,107 (Dec. 8, 2016); see also Compl. at 21.

²⁹ Compare W.V. Republican Party, Inc.’s 2016 Year-End Report of Receipts & Disbursements (Jan. 22, 2017), with West Virginia Republican Party Inc.’s Amended 2016 Year-End Report of Receipts & Disbursements at 9, 31 (Apr. 28, 2018)(disclosing a transfer from Trump Victory in the amount of \$18,505.14 and a transfer to the RNC in the amount of \$18,485.14); see Compl. at 22.

³⁰ Compare RNC’s 2016 Year-End Report of Receipts & Disbursements at 6,563 (Jan. 31, 2017), with W.V. Republican Party, Inc.’s 2016 Year-End Report of Receipts & Disbursements (Jan. 22, 2017); see Compl. at 22.

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6 In addition to the allegations discussed above, the Complaint alleges that the RNC used
7 the funds transferred from the SPCs to make party coordinated expenditures with the Trump
8 Committee in excess of the \$20,314,911.75 reported by the RNC.³³ According to the Complaint,
9 the RNC “allowed the Trump [Committee] to direct, oversee, and control its funds, including
10 funds that originated with [Trump Victory].”³⁴ As support, the Complaint cites to a *Politico*
11 article in which then-RNC Chair Reince Priebus describes the post-primary fusing of the Trump
12 Committee and the RNC as “seamless.”³⁵ The article states, “The entirety of the party apparatus
13 shifted quickly into ‘high gear’ on Trump’s behalf: RNC staffers long ago dispatched to swing
14 states, the party’s data operation, opposition research and policy shops; its ballot access team and

³³ See Compl. at 11-13.

³⁴ See *id.* at 11.

³⁵ *Id.* at 13 (quoting Eli Stokols, Reince Priebus’ Surrender, *POLITICO MAGAZINE*, (July 21, 2016),
<https://www.politico.com/magazine/story/2016/07/2016-gop-convention-reince-priebus-donald-trump-214078>).

1 deep fundraising network.”³⁶ Each morning, according to the article, the RNC informed Trump
2 staffers of news releases and other elements of its communications strategy.³⁷

3 Respondents deny the allegations regarding earmarking, contributions in the name of
4 another, and excessive contributions. Rather, Respondents contend that they engaged in “a series
5 of independent transactions [that are] legal on their face and thus insufficient to establish a
6 reason to believe.”³⁸ They further argue that they properly disclosed almost all of the receipts
7 from Trump Victory and transfers to the RNC identified in the Complaint in their original
8 disclosure reports.³⁹

9 **III. LEGAL ANALYSIS**

10 **A. There is Reason to Believe Respondents Violated the Joint Fundraising**
11 **Regulations and the Act’s Contribution Limits and Reporting Requirements**

12 The Act and Commission regulations permit candidates and political committees to
13 engage in joint fundraising activities by establishing a separate political committee to act as their
14 joint fundraising representative.⁴⁰ Participants must enter into a written agreement that identifies
15 this representative and states the formula for the allocation of fundraising proceeds and
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³⁶ Eli Stokols, Reince Priebus’ Surrender, POLITICO MAGAZINE, (July 21, 2016),
<https://www.politico.com/magazine/story/2016/07/2016-gop-convention-reince-priebus-donald-trump-214078>.

³⁷ *Id.*

³⁸ Trump Victory Resp. at 3; *see* RNC Resp. at 2-3, 8-19.

³⁹ RNC Resp. at 19-23. The RNC Respondents specifically argue that only the New Jersey Republican State Committee and the West Virginia Republican Party inadvertently omitted a transfer from Trump Victory and a transfer to the RNC on their original reports. *See id.* at 19 n.4. They explain that these SPCs did not receive a Request for Additional Information from the Commission regarding the omitted transfers, and that both Trump Victory and the RNC fully disclosed their sides of the transfers in their original reports. *Id.*

⁴⁰ *See* 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17(a)(1)(i).

1 expenses.⁴¹ Commission regulations also require that the representative establish a separate
2 depository account to be used solely for the receipt and disbursement of joint fundraising
3 proceeds and deposit those proceeds in this account within ten days of receipt.⁴²

4 All solicitations in connection with a joint fundraising effort must include a notice that
5 identifies all participating committees, describes the allocation formula, informs contributors that
6 they may choose to designate their contributions for a particular committee, and states that the
7 allocation formula may change if a contributor makes a contribution that is excessive relative to
8 any participant.⁴³ A contributor may make a contribution to the joint fundraising committee that
9 "represents the total amount that the contributor could contribute to all of the participants under
10 the applicable [contribution] limits."⁴⁴ For the 2015-2016 election cycle, individuals were
11 permitted to contribute no more than \$2,700 per election to a federal candidate committee,
12 \$10,000 per calendar year to a state political party committee, \$33,400 per calendar year to a
13 national political party committee, and \$100,200 each to the national party committee's
14 presidential nominating convention account, legal proceedings account, and headquarters
15 buildings account.⁴⁵

⁴¹ 11 C.F.R. § 102.17(c)(1). The fundraising representative must retain a copy of the agreement for three years and make it available to the Commission upon request. *Id.*

⁴² *Id.* § 102.17(c)(3)(i)-(ii). Each participant committee must amend its Statement of Organization to include the account as an additional depository. *Id.* § 102.17(c)(3)(i).

⁴³ *Id.* § 102.17(c)(2)(i).

⁴⁴ *Id.* § 102.17(c)(5).

⁴⁵ See 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b)(1), (c)(1), (c)(5); Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750-5,752 (Feb. 3, 2015); see also *Contribution Limits for 2015-2016 Federal Elections*, <https://transition.fec.gov/info/contriblimitschart1516.pdf>.

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1 Candidates and political committees are prohibited from knowingly accepting
2 contributions in excess of these limits.⁴⁶ In the context of joint fundraising, the representative is
3 responsible for screening all contributions to ensure they comply with the Act's source
4 prohibitions and amount limitations, collecting contributions, paying fundraising costs, and
5 distributing net proceeds to each participant.⁴⁷ If application of the joint fundraising committee's
6 allocation formula results in a violation of the contribution limits, the joint fundraising
7 committee may reallocate the excess funds to the other participant committees.⁴⁸

8 In *McCutcheon v. FEC*, a challenge to the aggregate contribution limits for individuals,
9 several dissenting Justices expressed concern that, in the absence of the aggregate limits, donors,
10 candidates, and political parties could use the joint fundraising mechanism and intraparty transfer
11 rules to circumvent federal contribution limits.⁴⁹ Although the Court found these arguments
12 insufficient to justify upholding the aggregate limits, the plurality stated "[a] joint fundraising
13 committee is simply a mechanism for individual committees to raise funds collectively, not to
14 circumvent base limits or earmarking rules."⁵⁰ The Court has recognized that the government

⁴⁶ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

⁴⁷ 11 C.F.R. § 102.17(b)(1), (c)(4)(i).

⁴⁸ *Id.* § 102.17(c)(6)(i). However, designated contributions may not be reallocated without the written permission of the contributor. *Id.* § 102.17(c)(6)(ii).

⁴⁹ See 134 S. Ct. 1434, 1465-1479 (2014) (Breyer, J., dissenting, joined by Ginsburg, J., Sotomayor, J., and Kagan, J.); *id.* at 1442 (finding the "aggregate" limit on contributors at 52 U.S.C. § 30116(a)(3) unconstitutional, while leaving in place the "base" limits on contributors at 52 U.S.C. § 30116(a)(1)).

⁵⁰ *Id.* at 1455 (citing 11 C.F.R. § 102.17(c)(5)).

1 has an interest in preventing circumvention of the contribution limits because "circumvention is
2 a valid theory of corruption."⁵¹

3 A joint fundraising representative must report all funds received in the reporting period
4 they are received and all disbursements in the reporting period they are made.⁵² Similarly, the
5 date a contribution is received by the joint fundraising representative is the date that the
6 participating political committee must report as the date the contribution was received, even if it
7 is disbursed by the joint fundraising representative at a later date and even though the
8 participating political committee is only required to report the proceeds once the funds have been
9 received from the fundraising representative.⁵³ After the joint fundraising representative
10 distributes the net proceeds, the participating committee must report its share received as a
11 transfer-in from the fundraising representative and also file a memo entry on Schedule A
12 itemizing its share of gross receipts as contributions from original contributors as required by
13 11 C.F.R. § 104.3(a).⁵⁴

14 1. Respondents Used Trump Victory to Direct Excessive Contributions to the RNC
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16 The facts of this case appear to present the scenario that troubled numerous Justices in
17 *McCutcheon*: a pre-arranged plan to circumvent the contribution limits via joint fundraising.

⁵¹ *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001); *see id.* n.18 (noting that the evidence supported "the long-recognized rationale of combating circumvention of contribution limits designed to combat the corrupting influence of large contributions from individuals to candidates").

⁵² 11 C.F.R. § 102.17(c)(8)(i)-(ii). The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104. *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the name of each person who makes a contribution over \$200, the total amount of receipts and disbursements, including transfers from affiliated committees and between political party committees, and appropriate itemizations, where required. *See* 52 U.S.C. § 30104(b)(2)-(4); 11 C.F.R. § 104.3(a)-(b).

⁵³ *See* 11 C.F.R. § 102.17(c)(3)(iii), (c)(8)(i)(A).

⁵⁴ *See id.* § 102.17(c)(8)(i)(B).

1 Rather than participating in Trump Victory to raise funds for themselves, the available
2 information supports the conclusion that the SPCs primarily participated as a mechanism to pass
3 additional contributions to the RNC, including contributions that exceeded the RNC's individual
4 contributor limits.

5 *First*, during the 2016 election cycle, the SPCs collectively transferred over 90% of their
6 Trump Victory receipts to the RNC,⁵⁵ and the majority transferred as much as 99% of their
7 Trump Victory receipts to the RNC.⁵⁶ Included in the transfers from the SPCs was more than
8 \$27 million from over 500 individual contributors who had already reached their limits for direct
9 contributions to the RNC.⁵⁷

10 *Second*, a significant amount of the SPCs' transfers to the RNC occurred nearly
11 contemporaneously with Trump Victory's distribution of the funds to the SPCs.⁵⁸ Disclosure
12 reports reveal over 100 instances where Trump Victory disbursed funds to the SPCs, and within
13 a day or two, the SPCs transferred the same amount, or within \$20 of that amount, to the RNC.⁵⁹

⁵⁵ The SPCs reported Trump Victory receipts totaling \$29,620,653.40 and disbursements to the RNC totaling \$27,572,567.50 ($\$27,572,567.50 \div \$29,620,653.40 \times 100 = 93.1\%$). Trump Victory reported transferring a total of \$29,719,302.17 to the SPCs, and the RNC reported receiving \$27,662,784.56 from the SPCs ($\$27,662,784.56 \div \$29,719,302.17 \times 100 = 93.1\%$).

⁵⁶ See *supra* note 19. For example, the Missouri Republican State Committee-Federal reported transfers from Trump Victory in the amount of \$1,142,117.10, and it reported transferring \$1,142,117.10 to the RNC, the equivalent of all of its Trump Victory allocated funds.

⁵⁷ See *supra* note 55.

⁵⁸ See Compl. at 9-11, Ex. A.

⁵⁹ See *id.*

1 The immediate transfers indicate that the SPCs served as vehicles to route excessive
2 contributions to the RNC.⁶⁰

3 *Third*, the SPCs began passing significant amounts of their allocated share of Trump
4 Victory contributions to the RNC under the purported authority of the intraparty transfer rules as
5 soon as they began receiving disbursements from Trump Victory. For instance, Trump Victory
6 first disbursed funds to the majority of the SPCs on September 30, 2016, transferring
7 \$8,609,664.39 to fifteen of them.⁶¹ Each SPC received a transfer in an amount ranging from
8 \$157,724.07 to \$877,803.77, and within a day, each of them transferred the exact amount or
9 within \$20 of that amount to the RNC for a total amount of \$8,609,364.39.⁶² This suggests that

⁶⁰ It appears that two SPCs retained the equivalent of more than half of their Trump Victory funds, a pattern that appears to be an exception to the more prevalent pattern of immediate transfers. *See supra* note 20.

⁶¹ *See* Trump Victory's Amended 2016 October Quarterly Report of Receipts & Disbursements at 1641, 1643-45, 1651-54 (Apr. 5, 2017).

⁶² *See* Ala. Republican Party's Amended 2016 October Monthly Report of Receipts & Disbursements at 78, 88 (Oct. 20, 2016); Conn. Republican Party's Amended 2016 October Monthly Report of Receipts & Disbursements at 50, 133 (May 4, 2017); Ill. Republican Party's Amended 2016 October Monthly Report of Receipts & Disbursements at 40, 56 (Feb. 16, 2017); Kan. Republican Party's 2016 October Monthly Report of Receipts & Disbursements at 57, 66 (Oct. 11, 2016); Miss. Republican Party's Amended 2016 October Monthly Report of Receipts & Disbursements at 42, 121 (Nov. 17, 2016); N.J. Republican State Committee's Amended 2016 October Monthly Report of Receipts & Disbursements at 15, 114 (May 26, 2017); N.C. Republican Party's 2016 October Monthly Report of Receipts & Disbursements at 36, 91 (Oct. 20, 2016); N.D. Republican Party's Amended 2016 October Monthly Report of Receipts & Disbursements at 22, 81 (May 22, 2017); Republican Party of Minn.-Federal's 2016 October Monthly Report of Receipts & Disbursements at 87, 113 (Oct. 20, 2016); Republican Party of Va.'s Amended 2016 October Monthly Report of Receipts & Disbursements at 103, 115 (June 12, 2017); Republican Party of Wis.'s Amended 2016 October Monthly Report of Receipts & Disbursements at 95, 136 (July 27, 2017); S.C. Republican Party's Amended 2016 October Monthly Report of Receipts & Disbursements at 14, 89 (May 30, 2017); Tenn. Republican Party Federal Election Account's 2016 October Monthly Report of Receipts & Disbursements at 17, 96 (Oct. 20, 2016); W.V. Republican Party, Inc.'s 2016 October Monthly Report of Receipts & Disbursements at 12, 103 (Oct. 15, 2016); Wyo. Republican Party, Inc.'s Amended 2016 October Monthly Report of Receipts & Disbursements at 8, 86 (Nov. 30, 2016); *see also* RNC's Amended 2016 Monthly Report of Receipts & Disbursements at 23, 168-72 (Nov. 3, 2016).

1 there was a predetermined plan for the SPCs to transfer the funds right to the RNC even before
2 they started receiving them.

3 *Fourth*, in the six weeks before the general election, the SPCs transferred over \$25
4 million of the \$29 million they received from Trump Victory.⁶³ The amount of Trump Victory
5 funds that were transferred through the SPCs and then to the RNC over such a short period of
6 time supports the conclusion that the funds ultimately given to the RNC were never intended to
7 stay in the accounts of the SPCs.

8 *Fifth*, two of the SPCs reported multiple transfers to the RNC in a way that suggests that
9 they understood that these funds were always intended for the RNC, not them. These SPCs
10 described the purpose of multiple transfers to the RNC as "JFC-Transfer-See Memo
11 Attribution,"⁶⁴ and "JFC Transfer-Trump Victory."⁶⁵

12 These facts, taken together, support the conclusion that the SPCs largely participated in
13 Trump Victory as a means to pass their contributions through to the RNC. As noted above,
14 included in the transfers from the SPCs to the RNC was more than \$27 million from over 500
15 individual contributors who could not have contributed these funds directly to the RNC because
16 they had already reached their contribution limit to the RNC. Thus, by redirecting funds through
17 the SPCs that could not have been directly contributed to the RNC, the transfers resulted in
18 excessive contributions from these donors to the RNC.

⁶³ The remaining nearly \$2 million of the more than \$27 million that the SPCs ultimately transferred to the RNC took place after the November 8, 2016 election but before the end of the year.

⁶⁴ See, e.g., N.C. Republican Party's 2016 October Monthly Report of Receipts & Disbursements at 91 (Oct. 20, 2016).

⁶⁵ See, e.g., Tenn. Republican Party Federal Election Account's Amended 2016 30-Day Post-General Election Report of Receipts & Disbursements at 125 (May 15, 2017).

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1 Respondents maintain that they engaged in “a series of independent transactions [that are]
2 legal on their face and thus insufficient to establish a reason to believe.”⁶⁶ The Commission,
3 however, is not required to evaluate each transaction separately and in a vacuum, and one court
4 has expressly cautioned against rigidly construing the Act’s language where it would permit the
5 circumvention of its provisions.⁶⁷ While the existence of intraparty transfer rules “reflects a
6 judgment that party committee units are to be relatively free to fund each other’s efforts,”⁶⁸ such
7 efforts to use these rules to evade the limits under the Act are impermissible.⁶⁹ To apply the
8 intraparty transfer provisions as urged by Respondents would effectively nullify the individual

⁶⁶ Trump Victory Resp. at 3; *see* RNC Resp. at 2-3, 8-19.

⁶⁷ *See FEC v. Furgatch*, 807 F.2d 857, 862 (9th Cir. 1987) (cautioning that courts should be careful to ensure that the Act’s “purposes are fully carried out, that they are not cleverly circumvented, or thwarted by a rigid construction of the terms of the Act”); *see also Colo. Republican Fed. Campaign Comm.*, 533 U.S. at 462, 464 n.28 (explaining that circumvention is a “systemic” problem that is “very hard to trace”).

⁶⁸ Statement of Reasons, Comm’rs. Aikens, Thomas, Elliott, McDonald, & McGarry at 4, MUR 4215 (Democratic Nat’l Comm.) (Mar. 26, 1998); *see also* 52 U.S.C. § 30116(a)(4); 11 C.F.R. § 110.3(c)(1); Explanation & Justification, Transfer of Funds; Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,298 (June 7, 1983) (explaining that where all of the participants to a joint fundraising activity are party committees of the same political party, they do not have to follow the allocation and notice requirements since the committees could decide, after the fundraising was over, to transfer any amount of funds among themselves).

⁶⁹ *See* First Gen. Counsel’s Rpt. at 24-34, Commission Certification at 1-2, MURs 3087/3204 (Nat’l Republican Senatorial Comm.) (May 21, 1991) (rejecting the argument that the unlimited transfer provision allowed a national party committee to transfer funds to a state party committee that used the funds to support a federal candidate in excess of the coordinated party expenditure limits); Commission Certification at 1-2, MURs 3087/3204 (Nat’l Republican Senatorial Comm.) (Aug. 2, 1994) (ratifying earlier reason-to-believe findings); *see also* 52 U.S.C. § 30125(a); 11 C.F.R. § 102.6(a)(1)(iv).

1 contribution limitations for a national party committee. The Commission should construe
2 statutes and regulations to harmonize and give effect to all of their provisions.⁷⁰

3 The SPCs also specifically note that they received their allocations from Trump Victory
4 and voluntarily decided to transfer or authorize the transfer of these funds to the RNC.⁷¹ The
5 facts, however, indicate that the SPCs' assertion that they voluntarily decided to transfer the
6 funds after they received them is not credible. Rather, the facts, fairly construed, show that the
7 funds transferred to the SPCs pursuant to the allocation formula were intended at the outset for
8 the RNC. Thus, it appears that the allocation formula was a pretext to redirect funds in excess of
9 the individual's contribution limits through the SPCs to the RNC that could not have been
10 directly contributed to the RNC.

11 Accordingly, we recommend that the Commission find reason to believe that Trump
12 Victory, Trump Committee, the RNC, and each of the twenty-one SPCs each violated 11 C.F.R.
13 § 102.17(c)(1) and (2), by soliciting and raising funds under a false joint fundraising agreement,
14 and the RNC violated 52 U.S.C. § 30116(f) by accepting excessive contributions.

15 At this time, we have no information that any donor contributed to Trump Victory with
16 knowledge that their contributions to the SPCs would be routed to the RNC. As such, we make

⁷⁰ See *United States v. Citgo Petroleum Corp.*, 801 F.3d 477, 485 (5th Cir. 2015) ("Regulations, like statutes, must be 'construed so that effect is given to all [their] provisions, so that no part will be inoperative or superfluous, void or insignificant.'" (alteration in original) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009))); see also *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (explaining that, when interpreting statutory language, we must look to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole"); accord *CREW v. FEC*, 316 F. Supp. 3d 349, 394-95 (D.D.C. 2018) (holding that the Commission's regulation does not implement the Act in a manner "so that effect is given to all its provisions" (quoting *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 824 (2018))).

⁷¹ RNC Resp. at 2, 14-17.

1 no recommendation at this time that any donor knowingly made an excessive contribution.⁷²
2 Similarly, there is no information that Donald J. Trump, in his individual capacity, violated the
3 Act with regard to the joint fundraising, and therefore we recommend that the Commission take
4 no action at this time as to him.

5 2. Respondents Failed to Properly Report Receipts and Disbursements from the Joint
6 Fundraising Committee
7

8 Having concluded that there is reason to believe that the SPCs were not legitimate
9 participants in the joint fundraising committee because they were largely used as mere pass-
10 throughs for contributions to the RNC, it necessarily follows that Respondents' disclosure
11 reports did not accurately reflect the real disposition of funds raised through Trump Victory.

12 Because most of the proceeds allocated by Trump Victory to the SPCs were in reality
13 contributions to the RNC, Trump Victory improperly reported the disbursements of these funds
14 as transfers to the SPCs, rather than transfers to the RNC, and the SPCs improperly reported
15 these funds as transfers from Trump Victory and contributions from the individual donors.
16 Similarly, the RNC also improperly reported the funds it received through the SPCs as transfers
17 from the SPCs rather than as transfers from Trump Victory and contributions from the individual
18 donors to Trump Victory.⁷³ Thus, it appears that Trump Victory, the SPCs, and the RNC
19 violated the reporting obligations of the Act. Accordingly, we recommend that the Commission

⁷² See First Gen. Counsel's Rpt. at 9-10, MUR 5430 (Buchanan for President) (not making any recommendation as to contributors who made excessive contributions because of the possibility that they relied on the committee's assurances that their contributions were legal).

⁷³ Trump Victory could not have transferred these funds directly to the RNC, nor could the RNC accept these funds as contributions.

2 and (b), and 11 C.F.R. § 104.3(a) and (b).

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B. The Commission Should Take No Action at This Time as to the Coordinated Expenditures Allegation

The Complaint alleges that because the RNC allowed the Trump Committee to exercise direction, oversight, and control over the RNC's funds, including those funds the RNC received through Trump Victory, all expenditures made by the RNC in connection with the presidential election should count as contributions to, and coordinated expenditures on behalf of, the Trump Committee, resulting in the RNC exceeding the federal limits on those contributions.⁷⁵

The Act prohibits any person from making, and any candidate or committee from accepting or receiving, excessive or prohibited contributions.⁷⁶ The term "contribution" includes anything of value made for the purpose of influencing a federal election.⁷⁷ Further, any expenditure made by a person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate," or the candidate's authorized political committee is considered an in-kind contribution to that candidate.⁷⁸ These "coordinated" expenditures are treated as contributions to the candidate and must be reported as expenditures made by the candidate's authorized committee.⁷⁹

Notwithstanding the general limits on contributions to candidates, the national committee of a political party may make coordinated party expenditures in connection with the presidential

⁷⁵ See Compl. at 11-13, 19-20.

⁷⁶ 52 U.S.C. § 30116(a), (f).

⁷⁷ *Id.* § 30101(8)(A)(i).

⁷⁸ See *id.* § 30116(a)(7)(B)(i); 11 C.F.R. §§ 109.20-.21, 109.37.

⁷⁹ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

1 general election, subject to the limits established by the Act and Commission regulations.⁸⁰
2 Coordinated party expenditures include disbursements for communications that are coordinated
3 with the candidate.⁸¹ For the 2016 general election, national party committees were limited to
4 making \$23,821,100 in coordinated party expenditures for presidential candidates,⁸² and the
5 RNC made coordinated expenditures of \$20,314,912,⁸³ leaving a balance of \$3,506,188.

6 The Complaint relies on the Trump Committee's purported control over the RNC's
7 funds, including those funds transferred to it by Trump Victory and the SPCs. To support this
8 argument, the Complaint cites a *Politico* article in which then-RNC Chair Reince Priebus
9 describes the fusing of the Trump Committee and the RNC as "seamless."⁸⁴ In addition, this
10 article states that the RNC shifted into "high gear" to support Trump and that each morning the
11 RNC informed Trump staffers of news releases and other elements of its communications
12 strategy.⁸⁵ While this and other news articles indicate that the RNC and Trump Committee

⁸⁰ 52 U.S.C. § 30116(d); 11 C.F.R. §§ 109.30, 109.32.

⁸¹ See 11 C.F.R. § 109.30; 11 C.F.R. § 109.37 (defining a party coordinated communication as a communication that (a) is paid for by a political party committee or its agent; (b) satisfies at least one of three content standards; and (c) satisfies at least one of the conduct standards in 11 C.F.R. §§ 109.21(d)(1) through (d)(6)).

⁸² See Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 81 Fed. Reg. 7101, 7103 (Feb. 10, 2016); see also 2016 *Coordinated Party Expenditure Limits*, https://transition.fec.gov/info/charts_cpe_2016.shtml.

⁸³ See RNC 2016 Amended Year-End Report of Receipts & Disbursements at 9,720 (Dec. 8, 2017).

⁸⁴ Eli Stokols, *Reince Priebus' Surrender*, POLITICO MAGAZINE, (July 21, 2016), <https://www.politico.com/magazine/story/2016/07/2016-gop-convention-reince-priebus-donald-trump-214078>.

⁸⁵ *Id.*

1 interacted with each other after Trump became the party's nominee,⁸⁶ they fail to identify any
2 disbursement by the RNC for a party coordinated communication or party coordinated
3 expenditure that has not already been reported. Nor is the available information at this time
4 sufficient for us to make a recommendation as to the Complaint's broader allegation that the
5 Trump Committee effectively controlled the RNC, thus resulting in excessive contributions to
6 the Trump Committee.

7 Accordingly, we recommend that the Commission take no action at this time as to these
8 allegations. Because we recommend an investigation of the potential violations of the joint
9 fundraising regulations and reporting requirements, that investigation may reveal any unreported
10 party coordinated expenditures that exceed the applicable limit or information material to the
11 allegation that the Trump Committee controlled the RNC. Thus, we will make the appropriate
12 recommendations following the conclusion of an investigation.

13 **C. The Commission Should Take No Action as to the Earmarking and**
14 **Contribution in The Name of Another Allegations**

15 Finally, the Complaint alleges that the transfers from Trump Victory to the RNC via the
16 SPCs show that Trump Victory donors directly or indirectly earmarked their contributions to the
17 RNC, and the RNC knowingly accepted contributions in the name of another by reporting that it
18 received contributions from the SPCs rather than the actual source of the funds, the individual

⁸⁶ See, e.g., Alexander Burns and Maggie Haberman, *Tensions Deepen Between Donald Trump and RNC*, NEW YORK TIMES, (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/donald-trump-rnc-reince-priebus.html> (noting that the RNC was performing many of the functions of a presidential campaign and that the RNC sent aides to work at Trump Tower to bolster collaboration between Trump Committee and the RNC); Kenneth P. Vogel, Eli Stokols, and Alex Isenstadt, *Trump Aides Huddle with RNC to Plot Big-Money Strategy*, (May 9, 2016), <https://www.politico.com/story/2016/05/trump-hammering-out-party-fundraising-agreement-222984> (noting Trump Committee staff "moved quickly to put its stamp on the party's general election planning process" and strategy meetings that included presentations on the RNC's "ground game," and its "data, communications, and research efforts").

1 contributors.⁸⁷ The Respondents, however, contend that there is no evidence that any Trump
2 Victory donor earmarked his or her contribution.⁸⁸

3 The Act and Commission regulations prohibit persons from using intermediaries to
4 circumvent the contribution limits.⁸⁹ This prohibition includes making a contribution in the
5 name of another, knowingly permitting his or her name to be used to effect such a contribution,
6 or knowingly accepting such a contribution.⁹⁰ For purposes of the Act, "all contributions made
7 by a person, either directly or indirectly, on behalf of a particular candidate, including
8 contributions which are in any way earmarked or otherwise directed through an intermediary or
9 conduit to such candidate, shall be treated as contributions from such person to such
10 candidate."⁹¹ Commission regulations define the term "earmarked" as "a designation,
11 instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which
12 results in all or any part of a contribution or expenditure being made to, or expended on behalf
13 of, a clearly identified candidate or a candidate's authorized committee."⁹² The intermediary
14 must report the original source and the intended recipient of an earmarked contribution to both
15 the Commission and the intended recipient.⁹³ Commission regulations also, however, clarify that

⁸⁷ See Compl. at 14-16.

⁸⁸ See Trump Victory Resp. at 5; RNC Resp. at 9, 14.

⁸⁹ See 52 U.S.C. §§ 30116(a)(8), 30122; 11 C.F.R. §§ 110.4, 110.6.

⁹⁰ 52 U.S.C. § 30122.

⁹¹ *Id.* § 30116(a)(8).

⁹² 11 C.F.R. § 110.6(b)(1).

⁹³ 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c)(1).

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1 a fundraising representative conducting joint fundraising activities pursuant to 11 C.F.R.

2 § 102.17 is not a conduit or intermediary.⁹⁴

3 In the past, the Commission has found that contributions were earmarked where there
4 was "clear documented evidence" of a designation or instruction by the donor to the recipient
5 committee.⁹⁵ The Commission has rejected earmarking allegations where the complaints
6 provided no information beyond alleged similarities in contribution amounts and timing, and
7 where credible information suggested that the similar contributions were not earmarked.⁹⁶ More
8 recently, however, a plurality of the Supreme Court observed in *McCutcheon* that the
9 Commission's earmarking regulations "define earmarking broadly"⁹⁷ and apply to "implicit
10 agreements" as well as explicit ones.⁹⁸ The plurality noted that if many state parties "would
11 willingly participate in a scheme to funnel money to another State's candidates," an agreement to
12 act as intermediaries for the contributors would trigger the earmarking provision.⁹⁹

⁹⁴ 11 C.F.R. § 110.6(a)(2)(i)(B).

⁹⁵ Factual & Legal Analysis at 6, MUR 5732 (Matt Brown for U.S. Senate, *et al.*) (citing MURs 4831/5274 (Nixon Campaign Fund, *et al.*) (finding earmarking where there was documentation in the form of checks with memo lines that stated "Nixon" among other written designations)).

⁹⁶ See Factual & Legal Analysis at 6-7, MUR 6985 (Lee Zeldin, *et al.*) (finding no reason to believe where alleged reciprocal contributions were not closely linked in timing and amount, respondents denied the allegations, and there was no information indicating that any of the contributions were earmarked or encumbered by "express or implied instructions to the recipient committees"); Factual & Legal Analysis at 5-7, 5 n.4, MUR 5732 (Matt Brown for U.S. Senate, *et al.*); First Gen. Counsel's Rpt. at 7-8, MUR 7246 (Buddy Carter for Congress, *et al.*); see also MUR 5520 (Billy Tauzin Congressional Committee, *et al.*); MUR 5445 (Geoffrey Davis for Congress); MUR 5125 (Paul Perry for Congress, *et al.*).

⁹⁷ *McCutcheon*, 134 S. Ct. at 1447.

⁹⁸ *Id.* at 1459 ("Many of the [circumvention] scenarios that the Government and the dissent hypothesize involve at least implicit agreements to circumvent the base limits—agreements that are already prohibited by the earmarking rules.").

⁹⁹ *Id.* at 1455 (citing the earmarking regulation codified at 11 C.F.R. § 110.6(b)(1)).

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1 In this case, the Complaint's contribution in the name of another allegation is premised
2 on the theory that the donors earmarked their contributions to the RNC. However, the Complaint
3 does not contain any evidence to support its allegation that "public statements by donors about
4 their contributions" constitute "evidence" of earmarking.¹⁰⁰ The Complaint cites a single news
5 article quoting a Republican donor about why he gave to an IEOPC that was not a participant in
6 the joint fundraising activity: "I remember thinking I wouldn't give [the super PAC Rebuilding
7 America Now] my money," but "I realized that I have never ever been as excited about a
8 candidate as I've been about Donald Trump."¹⁰¹ The Complaint also cites the statement by then-
9 RNC Chair Priebus regarding the "fusing" of the RNC as corroborating its earmarking claim.¹⁰²
10 These statements on their face fail to support an inference that any donor designated, instructed,
11 or encumbered his or her contribution to be given to Trump Victory for the SPCs, RNC, or
12 Trump Committee. And even under the Supreme Court's broader interpretation of the
13 earmarking regulations, there is no information that any Trump Victory donor "telegraphed" his
14 or her intent to support a particular candidate.¹⁰³ Despite our conclusion that there is reason to
15 believe that Trump Victory was used to funnel excessive contributions to the RNC through the
16 SPCs, the available record is not sufficient to conclude that the donors knew about this plan.

17 Because our proposed investigation of the Respondents' joint fundraising activities may
18 yield evidence on both the earmarking and contribution in the name of another allegations, we

¹⁰⁰ Compl. at 6.

¹⁰¹ *Trump Spent Massive Amounts in September Just Before Donors Grew Jittery*, CNN (Oct. 21, 2016),
<https://www.cnn.com/2016/10/20/politics/donald-trump-september-donors-jittery/index.html>.

¹⁰² Compl. at 14-15.

¹⁰³ See *McCutcheon*, 134 S. Ct. at 1455-56.

1 recommend that the Commission take no action at this time on the alleged violations of 52
2 U.S.C. § 30116(a)(8) and 52 U.S.C. § 30122.

3 **IV. PROPOSED INVESTIGATION**

4 The investigation would seek information regarding the formation and operation of the
5 joint fundraising committee. We plan to request information about the relationship between the
6 Trump Committee, RNC, and the SPCs in connection with the joint fundraising; the movement
7 of funds between Trump Victory, the SPCs, and the RNC; and whether the SPCs independently
8 consented to or authorized the movement of such funds. This information is material in
9 determining each participant's knowledge of and agreement to the apparent effort to circumvent
10 the contribution limits, allowing us to evaluate the extent of the violations and the liability of
11 each individual participant.

12 **V. RECOMMENDATIONS**

- 13 1.
14 2.
15 3. Find reason to believe that Trump Victory and Bradley T. Crate in his official
16 capacity as treasurer, Donald J. Trump For President, Inc. and Bradley T. Crate in his
17 official capacity as treasurer, the Republican National Committee and Anthony W.
18 Parker in his official capacity as treasurer, and the twenty-one SPCs violated
19 11 C.F.R. § 102.17(c)(1) and (2);
20 4. Find reason to believe that the Republican National Committee and Anthony W.
21 Parker in his official capacity as treasurer violated 52 U.S.C. § 30116(f);
22 5. Find reason to believe that Trump Victory and Bradley T. Crate in his official
23 capacity as treasurer, the Republican National Committee and Anthony W. Parker in
24 his official capacity as treasurer, and the twenty-one SPCs violated 52 U.S.C.
25 § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b);
26 6.
27
28

7. Take no action at this time with regard to the alleged violations of 52 U.S.C. § 30116(a), (d), (f), and 11 C.F.R. §§ 109.20(a) and 109.32 against the Republican National Committee and Anthony W. Parker in his official capacity as treasurer and Donald J. Trump For President, Inc. and Bradley T. Crate in his official capacity as treasurer;
8. Take no action at this time with regard to the alleged violations of 52 U.S.C. §§ 30116(a)(8) and 30122 and 11 C.F.R. §§ 110.4 and 110.6 against all Respondents.
9. Approve the attached Factual and Legal Analyses; and
10. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

2/13/19
Date

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